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FISCAL IMPACT STATEMENT

LS 6326

BILL NUMBER: SB 173

NOTE PREPARED: Feb 26, 2007

BILL AMENDED: Feb 26, 2007

SUBJECT: Nuisance Actions.

FIRST AUTHOR: Sen. Jackman

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: Local

Summary of Legislation: (Amended) This bill provides that a court may award reasonable costs and attorney's fees to a forestry, agricultural, or industrial operation that successfully defends a nuisance action.

Effective Date: July 1, 2007.

Explanation of State Expenditures:

Explanation of State Revenues:

Explanation of Local Expenditures: (Revised) The fiscal impact of this bill would likely be minimal. Local governments generally do not file nuisance lawsuits.

Background: Under common law, persons in possession of real property (either land owners or tenants) are entitled to the comfortable enjoyment of life or property. In Indiana, a neighbor can file a nuisance claim when another neighbor interferes with that enjoyment by creating nuisances that are injurious to health; indecent; offensive to the senses (such as smells or loud noises); or an obstruction to the free use of property.

When claiming a nuisance, the person filing the case is requesting that a condition be fixed either by stopping an activity or repairing the conditions causing the nuisance. A nuisance claim is generally different from a tort claim because a tort claim typically involves claiming that a neighbor committed a wrongful act that can only be corrected by a monetary payment from the neighbor who caused the damage. In environmental lawsuits, local governments are more likely to file a tort rather than a nuisance claim.

If the forestry, agricultural, or industrial operation caused some type of damage to the local government, the local government could file a tort claim against any of these operations to order the defendant to pay for the costs of the damage.

This bill could affect counties, cities, or towns if any of them file a nuisance lawsuit against a forestry, industrial, or agricultural operation. Under current law, counties, cities, or towns can file a lawsuit against any of these operations. If one of these types of operations is the defendant and the operation successfully defends the lawsuit, then the operation is entitled to recover reasonable fees and costs of legal representation. The number of these nuisance lawsuits filed by local governments is not reported or known.

This bill would permit, but not require, courts to award a forestry, agricultural, or industrial operation with the costs of reasonable court costs and attorney fees that prevail in nuisance lawsuits. Consequently, any county or municipal government that unsuccessfully files a nuisance lawsuit against a forestry, agricultural, or industrial operation could be liable for any filing fees and attorney fees incurred by the defendant depending on the discretion of the court.

Explanation of Local Revenues:

State Agencies Affected:

Local Agencies Affected: Cities, counties, towns

Information Sources: Indiana code; <http://en.wikipedia.org/wiki/Nuisance>

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